

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

LAURA SEIDL, derivatively on behalf of the)
Nominal defendant with respect to its series)
mutual fund, the American Century Ultra Fund,)

Plaintiff,)

v.)

Case No. 10-4152-CV-W-GAF

AMERICAN CENTURY COMPANIES, INC.,)
AMERICAN CENTURY INVESTMENT)
MANAGEMENT, INC., JAMES E. STOWERS,)
JR., JAMES E. STOWERS, III, JONATHAN)
S. THOMAS, THOMAS A. BROWN,)
ANDREA C. HALL, DONALD H. PRATT,)
GALE E. SAYERS, M. JEANNINE)
STRANDJORD, TIMOTHY S. WEBSTER,)
WILLIAM M. LYONS, MARK MALLON,)
WADE SLOME, BRUCE WIMBERLY, JERRY)
SULLIVAN and BILL MONROE,)

Defendants,)

AMERICAN CENTURY MUTUAL)
FUNDS, INC., doing business as AMERICAN)
CENTURY ULTRA FUND,)

Nominal Defendant.)

**SUGGESTIONS IN SUPPORT OF
INSTITUTIONAL DEFENDANTS' AMENDED MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED VERIFIED DERIVATIVE COMPLAINT**

Pursuant to Fed R. Civ. P. 12(b)(6), Defendants American Century Companies, Inc. (“ACC”), American Century Investment Management, Inc. (“ACIM”), James E. Stowers, Jr., James E. Stowers, III, Jonathan S. Thomas, William M. Lyons, Mark Mallon, Wade Slome, Bruce Wimberly, Jerry Sullivan, and Bill Monroe (together, “Institutional Defendants”), respectfully request that the Court dismiss Plaintiff’s First Amended Verified Derivative Complaint (“First Amended Complaint”) with prejudice.

SUGGESTIONS

As explained in more detail in the Suggestions in Support of Amended Motion to Dismiss filed by Thomas A. Brown, Andrea C. Hall, Donald H. Pratt, Gale E. Sayers, M. Jeannine Strandjord, and Timothy S. Webster and nominal defendant American Century Mutual Funds, Inc., doing business as American Century Ultra Fund (the “Independent Directors’ Motion”), Plaintiff’s claims fail¹ because she has failed to allege facts establishing wrongful refusal of demand. Plaintiff has failed to allege facts establishing that the Special Litigation Committee (1) failed to act independently, (2) failed to act in good faith, or (3) failed to conduct a reasonable investigation that reached a reasonable conclusion. Plaintiff’s claims against defendant Monroe and for breach of contract should also be dismissed because they were encompassed by the

¹ In addition to this action, Plaintiff’s counsel has filed virtually identical complaints in multiple jurisdictions across the country, many of which have already been dismissed with prejudice. See *Seidl v. American Century Cos., Inc.*, 713 F. Supp. 2d 249 (S.D.N.Y. 2010) (granting motion to dismiss with prejudice), *aff’d*, 427 Fed. App’x 35 (2d Cir. 2011), *petition for cert. filed*, No. 11-339 (U.S. Sep. 16, 2011); *McBrearty v. Vanguard Group, Inc.*, No. 08-cv-7650, 2009 WL 875220 (S.D.N.Y. April 2, 2009) (same), *aff’d* 353 F. App’x 640 (2d Cir. 2009), *cert. denied*, 130 S. Ct. 3411 (2010); *Wodka v. Causeway Capital Mgmt. LLC*, No. 09-cv-02625 (C.D. Cal. April 15, 2009) (order dismissing action with prejudice), *aff’d* No. 09-56733, 2011 WL 1837698 (9th Cir. May 16, 2011), *petition for cert. filed*, No. 11-372 (U.S. Sep. 22, 2011); *Gamoran v. Neuberger Berman Mgmt., LLC*, No. 10 Civ. 6234 (S.D.N.Y. May 11, 2011) (order dismissing action without prejudice); *Hartsel v. Vanguard Group, Inc.*, No. 5394-VCP, 2011 WL 2421003 (Del. Ch. June 15, 2011) (dismissing action with prejudice); see also *Gomes v. American Century Cos., Inc.*, No. 10-cv-00083-SOW (W.D. Mo. filed Jan. 27, 2010); *Gamoran v. Neuberger Berman LLC*, No. 11-cv-00751 (D. Del. filed Aug. 25, 2011).

recommendation of the Special Litigation Committee and because Plaintiff is precluded from bringing such claims under the doctrines of claim preclusion and issue preclusion. The Institutional Defendants also join the Independent Directors' Motion in all respects and incorporate their arguments fully by reference.

Dated: November 30, 2011

Respectfully submitted,

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